

EXHIBIT 3

CASE NO. 2:17-cv-02000-APG-GWF

Copy of *FTC v. Asset & Capital
Management Group et al.*, Case
No. 13-cv-01107 (C.D. Cal.
Oct. 1, 2013), Defendants'
Unopposed Motion for Release
of Funds, ECF No. 77

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Western Capital Group, Inc., Credit MP, LLC, One FC, LLC,
Thai Han, Keith Hua and James Tran Phelps

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,

Plaintiff,
v.

ASSET & CAPITAL MANAGEMENT
GROUP, et al. and DOES 1 through
100, inclusive,

Defendants.

Case No. 13-01107 DSF (JCX)

[Assigned to The Honorable Dale S.
Fischer, Courtroom 840]

**NOTICE OF MOTION AND
DEFENDANTS' UNOPPOSED
MOTION FOR RELEASE OF
FUNDS FOR LIVING EXPENSES
AND ATTORNEYS' FEES TO
THAI HAN, KEITH HUA AND
JAMES TRAN PHELPS**

Judge: Dale S. Fischer
Ctmm: 840
Date: November 4, 2013
Time: 1:30 p.m.

Original Complaint Filed:
July 23, 2013

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**DEFENDANTS' UNOPPOSED MOTION FOR RELEASE OF FUNDS FOR
LIVING EXPENSES AND ATTORNEY'S FEES TO THAI HAN, KEITH
HUA AND JAMES TRAN PHELPS**

1 TO THE HONORABLE DALE S. FISCHER, UNITED STATES
2 DISTRICT COURT JUDGE, AND TO ALL PARTIES AND THEIR
3 ATTORNEYS OF RECORD:

4 PLEASE TAKE NOTICE that on November 4, 2013, Defendants Thai Han,
5 Jim Tran Phelps, Keith Hua, Asset & Capital Management Group, Crown Funding
6 Company, LLC, Western Capital Group, Inc., Credit MP, LLC, and One FC, LLC
7 (the "ACMG Defendants") will and hereby do move pursuant to Section II.E of the
8 Stipulated Preliminary Injunction (the "Order") (D.I. 51) for an order granting the
9 release of additional funds for the payment of the reasonable and necessary living
10 expenses of defendants Han, Phelps and Hua, and for ACMG Defendants'
11 attorney's fees. As stated herein and in the supporting declaration of Benjamin T.
12 Wang, the present request for release of funds for attorney's fees and living
13 expenses is reasonable. ACMG Defendants also respectfully request that the Court
14 grant the requested relief before the FTC's anticipated motion to stay the case in
15 light of the Government shutdown. ACMG Defendants have met and conferred
16 with Plaintiff Federal Trade Commission ("FTC") and the FTC has indicated that it
17 does not oppose this motion.

18 The Stipulated Preliminary Injunction (the "Order") (D.I. 51) imposes an
19 asset freeze over the funds, real and personal property and other assets of the
20 ACMG Defendants, with the exception of specified funds as set forth in Sections
21 II.B-E of the Order.

22 Pursuant to Section II.B-D, funds were released to cover the reasonable and
23 necessary living expenses of defendants Messrs. Hua, Han, and Phelps.

24 Section II.E of the Order provides that defendants Messrs. Hua, Han, and
25 Phelps may request the release of additional funds for the payment of reasonable
26 and necessary living expenses and attorney's fees.

1 Since the original release of funds as provided in Section II.B-D of the
2 Order, Mr. Hua has spent \$7,682.00 to cover payments for his home mortgage,
3 homeowner association, utilities, car, car insurance, car registration, phone, food,
4 and child support payments. Mr. Hua now has only \$818.00 remaining, is already
5 behind in additional child support payments, and will not be able to satisfy bills for
6 living expenses that will soon come due. The FTC does not oppose the release of
7 the sum of \$1,000 to defendant Mr. Hua for living expenses, with said \$1,000 to be
8 derived from the reserves identified as "Cash on Hand" at Item 9a, page 4, of the
9 sworn financial statement of Mr. Hua, dated August 5, 2013. All remaining "Cash
10 on Hand" identified by Mr. Hua shall remain frozen.

11 Since the original release of funds as provided in Section II.B-D of the
12 Order, Mr. Han has spent \$8,555.00 to cover payments for his home utilities, home
13 alarm, car, health insurance, phones, clothing and food for his family. Mr. Han
14 now has only \$445.00 remaining, and will not be able to satisfy bills for several
15 upcoming living expenses that will soon come due. The FTC does not oppose the
16 release of the sum of \$4,000 to Mr. Han for living expenses, with said \$4,000 to be
17 derived from the reserves identified as "Cash on Hand" at Item 9a, page 4, of the
18 sworn financial statement of Thai Han, dated August 5, 2013. All remaining
19 "Cash on Hand" identified by Mr. Han shall remain frozen.

20 Since the original release of funds as provided in Section II.B-D of the
21 Order, Mr. Phelps has spent \$8,600.00 to cover payments for his rent, utilities,
22 cars, phone, insurance, clothing and food. Mr. Phelps now has only \$400.00
23 remaining, and will not be able to satisfy bills for several upcoming living
24 expenses that will soon come due. The FTC does not oppose the release of the
25 sum of \$4,000 to Mr. Phelps for living expenses, with said \$4,000 to be derived
26 from the reserves identified as "Cash on Hand" at Item 9a, page 4, of the sworn
27

1 financial statement of Jim Tran Phelps, dated August 5, 2011 [sic]. All remaining
2 "Cash on Hand" identified by Mr. Phelps shall remain frozen.

3 Additionally, the FTC does not oppose the release of the sum of \$105,000
4 from repatriated funds held in the escrow account of counsel (Russ August &
5 Kabat) for the ACMG Defendants for the payment of legal services provided or to
6 be provided to the ACMG Defendants. The total sum of repatriated funds held in
7 escrow by Russ August & Kabat is \$803,867.38. Those funds were repatriated by
8 Messrs. Han and Phelps pursuant to Section VI.C of the Order, and are currently
9 held in Russ August & Kabat's IOLTA trust account, interest for which is provided
10 to the State Bar of California at the rate of .03%. With the exception of the
11 \$105,000 for payment of legal services, all remaining repatriated funds held in
12 escrow by Russ August & Kabat in connection with this matter shall remain
13 frozen.

14 As of August 31, 2013, counsel for the ACMG Defendants have billed
15 \$99,257.52, which included fees for, among other things, (i) preparing each of the
16 Stipulating Individual Defendants for deposition and defending them at their
17 depositions, (ii) legal research regarding the claims asserted in the FTC's
18 complaint and potential defenses, (iii) numerous in-person meetings and telephone
19 conferences with the Stipulating Individual Defendants to gather facts, documents,
20 and other materials relevant to this matter, (iv) compiling extensive financial
21 disclosures for both the Stipulating Individual Defendants, several corporate
22 defendants, and several related entities as required by the temporary restraining
23 order and Order, (v) numerous telephone discussions and written correspondence
24 with various third parties to gather and collect facts, documents and other materials
25 relevant to this matter, and, where required, to provide notice of the temporary
26 restraining order and Order, (vi) numerous telephone conferences and written
27 correspondence with counsel for the FTC and Receiver to ensure compliance with

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the terms of the Order and to facilitate the collection and disclosure of information and materials required by the temporary restraining order and Order, (vii) drafting, reviewing, and revising the parties' stipulated preliminary injunction and correspondence with the FTC and Receiver regarding the same, (viii) preparation of various declarations regarding employment prospects and compliance with the terms of the temporary restraining order and Order, and (ix) various other activities to preserve and collect assets of the Receivership estate, including facilitating the repatriation of over \$800,000.¹ The requested funds will be used to pay for past and future attorney's fees. The ACMG Defendants are currently engaged in settlement discussions with the FTC, and, assuming settlement discussion continue to be productive, expect that the number of hours billed will decrease.

Accordingly, and subject to the approval of the Court, the ACMG Defendants respectfully request that the following sums be released from the assets frozen pursuant to the Order, Section II.E, according to the guidelines provided herein:

- a. To Thai Han, \$4,000;
- b. To Jim Tran Phelps, \$4,000;
- c. To Keith Hua, \$1,000; and
- d. To counsel (Russ August & Kabat) for the ACMG Defendants, \$105,500.

Dated: October 1, 2013

Respectfully submitted,

/s/ Benjamin T. Wang
LARRY C. RUSS
lruss@raklaw.com

¹ Concurrently herewith counsel for the ACMG Defendants will submit an application and proposed order to provide its billing records in this matter to the Court for in camera inspection.

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TO THE HONORABLE DALE S. FISCHER, UNITED STATES DISTRICT COURT JUDGE, AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 4, 2013, Defendants Thai Han, Jim Tran Phelps, Keith Hua, Asset & Capital Management Group, Crown Funding Company, LLC, Western Capital Group, Inc., Credit MP, LLC, and One FC, LLC (the “ACMG Defendants”) will and hereby do move pursuant to Section II.E of the Stipulated Preliminary Injunction (the “Order”) (D.I. 51) for an order granting the release of additional funds for the payment of the reasonable and necessary living expenses of defendants Han, Phelps and Hua, and for ACMG Defendants’ attorney’s fees. As stated herein and in the supporting declaration of Benjamin T. Wang, the present request for release of funds for attorney’s fees and living expenses is reasonable. ACMG Defendants also respectfully request that the Court grant the requested relief before the FTC’s anticipated motion to stay the case in light of the Government shutdown. ACMG Defendants have met and conferred with Plaintiff Federal Trade Commission (“FTC”) and the FTC has indicated that it does not oppose this motion.

The Stipulated Preliminary Injunction (the “Order”) (D.I. 51) imposes an asset freeze over the funds, real and personal property and other assets of the ACMG Defendants, with the exception of specified funds as set forth in Sections II.B-E of the Order.

Pursuant to Section II.B-D, funds were released to cover the reasonable and necessary living expenses of defendants Messrs. Hua, Han, and Phelps.

Section II.E of the Order provides that defendants Messrs. Hua, Han, and Phelps may request the release of additional funds for the payment of reasonable and necessary living expenses and attorney’s fees.

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 2 Order, Mr. Hua has spent \$7,682.00 to cover payments for his home mortgage,
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